FOR MYSORE STATE

50.

Home (195 3 .) Department.

R. SERIES.

G.O. NO. 648

Dated 28-2-53

Passed

[Despatch Abstract.]

Motor Vehicles - Stage Carriages - Regional Transport Authority, South Kanara - Route Hampankatta to Morgan's Gate via Balmatta and Kankanady in Mangalore Town Service - Permit refusedby Regio al Transport Authority Appeal dismissed by Central Road Traffic Board - Rev. petition to Govt. - rejected.

BEFORE THE GOVERNMENT OF MADRAS, HOME DEPARTMENT,

FORT ST. GEORGE, M A D R A S.

Alexander Misquith,
Proprietor,
Misquith Motor Service,
Hampankatta, MANGALORE-1.
(South Kanara District) ... Appellant.

V E R S U S

Messers The United Trading Corporation and Workshops Limited, MANGALORE.
(South Kanara District) ... Respondent.

Appeal under Rule148(2)of the Madras Motor Vehicles Rules against the Proceedings under item No.1, dated 10-1-1953, of the Central Road Traffic Board, Madras, in the matter of the grant of a pucca stage carriage permit for one bus on the Hampankatta to Morgan's Gate Route via Balmatta and Kankanady.

Being highly aggrieved by the proceedings under item No.1, dated 10-1-1953, of the Central Road Traffic Board, Madras, dismissing the appellant's appeal against the proceedings under item No.I, dated 3-11-1952, of the Regional Transport Authority, South Kanara, rejecting the appellant's application for the grant of a pucca stage carriage permit for one bus to ply on the Hampankatta to Morgan's Gate route via Balmatta and Kankanady, and granting the said permit to the Respondent, the appellant begs to prefer this appeal,on the following, among other grounds:-

1. The order of the Central Road Traffic Board, Madras, is contrary to law, and opposed to considerations of justice and equity.

2. The only ground on which the appellant's claims in respect of the permit in question was rejected by the Central Road Traffic Board, Madras, in favour of

the Respondent is that the Respondent " is an existing operator ..... already operating on another town route."

3. The appellant, having entered the field of bus transport business as early as in February, 1951, whereas the Respondent started service as a bus operator on 1-1-1953, on a permit granted to him by the Regional Transport Authority, South Kanara, on 28-8-1952, the appellant, who was himself only a single bus operator, should have been made a fleet-owner in preference to the Respondent, who was quite a new entrant. The grant of the second permit to the Respondent by the Regional Transport Authority, South Kanara, on 3-11-1952 even before the Respondent had started operating on the first permit granted to him on 28-8-1952, was irregular being a significant departure from the approved practice of the Regional Transport Authority itself; for, in no other case so far was any new entrant granted a permit in this district for a second route till he had proved himself an efficient operator.

4. The grant of the permit, now under appeal, to the Respondent was also in flagrant violation of the declaration of the Regional Transport Authority, South Kanara, in the self-same proceedings under item No.I, dated 3-11-1952, that "large fleet-owners should not be given monopoly in bus trade", as will be clear from the following submissions:-

(a) The Respondent Company and Messers Shanker Vittal Motor Company Limited, Mangalore,- which is already a large fleet-owner operating a network of buses throughout this district,- are closely allied concerns, having their office in the same building,- namely, in the Head Office of Messers Shanker Vittal Motor Company Limited at Attavar, Mangalore; the Managing Director of the Respondent Company is the uterine younger brother of the Managing Director of

Rangnath

5

Messers Shanker Vittal Motor Company Limited; and, of the total of 7 directors of the Respondent Company, 6 are also directors of Messers Shanker Vittal Motor Company Limited, the 7th director of the Respondent Company being Sri A.Sripathi Rao, Manager of Messers Shanker Vittal Motor Company Limited. Thus all the seven directors of the Respondent Company are directly connected with Messers Shanker Vittal Motor Company Limited, which consists of 9 directors in all. The truth of these submissions is proved by the two certified extracts regarding the names and addresses of the Respondent Company and of Messers Shanker Vittal Motor Company Limited, submitted herewith as enclosures to this appeal.

(b) The Respondent Company is thus a creation of Messers Shanker Vittal Motor Company Limited, which, being a large fleet-owner already, is apparently attempting to extend its operations under the name of the Respondent Company, an allied concern, and so to strengthen its monopoly over bus transport services in this district in spite of the Regional Transport Authority's vehement declaration that "LARGE FLEET-OWNERS SHOULD NOT BE GIVEN MONOPOLY IN BUS TRADE."

5. The grant of the permit in question to the Respondent Company is thus also opposed to the declared policy of the Government to discourage monopolist control of bus transport services in public interests.

6. The Regional Transport Authority, South Kanara, rejected the appellant's application for the permit in question in the first instance on the sole ground that the appellant had on 28-1-1952 surrendered a permit for an unremunerative route "disregarding difficulties caused to the public in so doing without adequate notice." As the appellant by his first appeal satisfied the Central Road Traffic Board, Madras,

Misquith

that this ground was based on a thorough misappreciation of facts, the only ground for the appellant's disqualification urged by the Regional Transport Authority, South Kanara, did not find favour with the Central Road Traffic Board, Madras. The appellant begs to submit herewith a copy of his appeal to the Central Road Traffic Board, Madras, in support of this submission.

Pl. 23-45 below

7. The Central Road Traffic Board, Madras, while thus finding no ground for rejecting the appellant's request for the permit in respect of the route in question, should have granted the permit to the appellant, who was fully qualified for the same on account of his proved efficient service to the public as a bus operator with a single new model bus since February, 1951, on the long-distance Mangalore to Coondapoor route of 90 miles without break-down of services on even a single occasion. The appellant had maintained his services efficiently to the entire satisfaction of the public without a single complaint of overload or delay in plying his services, whereas the Respondent, having started service as a bus operator only on 1-1-1953, the Regional Transport Authority, South Kanara, had really no data to judge as to the Respondent's qualifications for being made a fleet-owner, though the Regional Transport Authority was well aware that it had on 4-12-1950 rejected a prior application of the Respondent for a stage carriage permit on the ground that "they are found to have sold their lorries with permits."

8. The appellant, therefore, prays that on a just and sympathetic consideration of the facts submitted above, the order of the Central Road Traffic Board, Madras, dated 10-1-1953, dismissing the appellant's appeal may be set aside, and that the permit for the Hampankatta to Morgan's Gate Route via Balmatta and Kankanady may be granted to him.

Sd/-

p11 4 9. Challan No.1844 dated 14-2-1953 of Mangalore Sub Treasury for Rs.50/- (Rupees Fifty only) towards payment of the necessary fee on this appeal, is enclosed.

Mangalore,
14-2-1953.

Alexander Misquith
(Alexander Misquith)
Appellant.

List of Enclosures:-

p11 below 1. Challan No.1844, dated 14-2-53 of Mangalore SubTreasury for Rs.50/-

p13 below 2. Proceedings of the meeting of the Central Road Traffic Board, Madras, dated 10-1-53, item No.1, despatched on 16-1-1953.- R.No.60301/A1/52, dated 10-1-53.

Pp 15-17 below 3. Certified copy dated 7-2-53 granted by the Assistant Registrar of Joint Stock Companies, Mangalore, furnishing names and addresses of the directors of the Shanker Vittal Motor Company Limited, Mangalore, on two sheets.

Pp 19-21 below 4. Certified copy dated ~~14-2-53~~ 7-2-53 granted by the Assistant Registrar of Joint Stock Companies, Mangalore, furnishing names and addresses of the directors of The United Trading Corporation and Workshops Limited Mangalore, on two sheets.

Pp 23-45 below 5. True copy of appeal memo dated 29-11-52 of the appellant submitted to the Central Road Traffic Board, Madras, in this matter on 13 sheets.

6. Three spare copies of this appeal.

Provincial
Central.

ORIGINAL

11

(For instructions see reverse.)

Challan for payment of money into the ~~Huzur Treasury~~ Sub-Treasury at Mangalore

No. 1044

P

By whom paid and name and address of the person on whose behalf money is paid.	On what account, with authority if any and head of account.*	Amount.			Monthly consecutive number assigned to the credit in the day-book.	
		Rs.	A.	P.	No.	Month.
Alexander Misquith Proprietor, Misquith Motor Service Mangalore 1	Fee for Route appeal against R.T.B. Kadur Proceedings Item No. 1 dated 10-1-53	52	-	-		
Date 14-2-1953.	Total (in words and figures) ..	52	-	-		

Signature of Remitter. Misquith

Rupees fifty two

52/ Fifty two

Received Rupees

Huzur Treasury

Sub-Treasury

The

Entered.

CANCELLED 14 FEB 1953

Signature of Treasury Shroff.

Signature of English Head Accountant.

Signature of Treasury Officer.

Taluk Head Accountant or Sarishtadar.

* Head of account should be filled in by the Departmental Officer or Treasury. [P.T.O.

T. & A. 1 (a).

12

INSTRUCTIONS

ಆದೇಶಗಳು

"The receipt is not valid or binding on the Government unless—

I. In the case of payments in Huzur Treasuries it is signed (1) by the Huzur Treasurer and (2) by the English Head Accountant when the amount is under Rs. 500 and also (3) by the Treasury Deputy Collector when the amount is Rs. 500 or more.

II. And in the case of payment in Sub-Treasuries, (1) by the Shroff and (2) by the Taluk Head Accountant or Taluk Sarishtadar."

III. Receipts for cash or cheques paid for service stamps should be given in M.T.C. Form 5-A (T. & A. 85).

"I. ಹಜಾರ್ ಖಜಾನೆಗಳಲ್ಲಿ ಮಾಡಿದ ಪಾವತಿಗಳ ಸಂಗತಿಯಲ್ಲಿ, (1) ಹಜಾರ್ ಟ್ರೈಜರರಿಂದ ಮತ್ತು (2) ಮೊತ್ತವು 500 ರೂಪಾಯಿಗಿಂತ ಕಡಿಮೆಯಿರುವಲ್ಲಿ ಇಂಗ್ಲೀಷ್ ಹೆಡ್ ಅಕೌಂಟೆಂಟರಿಂದ ಮತ್ತು (3) ಮೊತ್ತವು 500 ರೂಪಾಯಿ - ಯಾ - ಅದಕ್ಕೆ ಮೀರಿ ಇರುವಲ್ಲಿ ಟ್ರೈಜರಿ ಡಿಪ್ಯುಟಿ ಕಲೆಕ್ಟರಿಂದ ಸಹಿ ದಸ್ಕತು ಮಾಡಲ್ಪಟ್ಟಿರದೆ ಬಿಡಾ,

II. ಸಬ್ ಟ್ರೈಜರಿಗಳಲ್ಲಿ ಮಾಡಿದ ಪಾವತಿಗಳ ಸಂಗತಿಯಲ್ಲಿ (1) ಶರಾಫನಿಂದಲೂ, (2) ತಾಲೂಕು ಹೆಡ್ ಅಕೌಂಟೆಂಟ್ - ಯಾ - ತಾಲೂಕು ಶಿರಸ್ತೆದಾರರಿಂದಲೂ ದಸ್ಕತು ಮಾಡಲ್ಪಟ್ಟಿರದೆ ಬಿಡಾ,

ಈ ರಸೀದಿಯು ಸಾಧುವಾದುದಾಗಿ - ಯಾ - ಗವರ್ನ್‌ಮೆಂಟಿಗೆ ಬದ್ಧವಾದುದೆನಿಸುವಂಥದಾಗಿ ಇರುವುದಿಲ್ಲ."

III. ಸರ್ವಿಸ್ ಸ್ಟ್ಯಾಂಪ್ಸುಗಳಿಗಾಗಿ ಪಾವತಿಮಾಡಿದ ನಗದು - ಯಾ - ಚೆಕ್ಕುಗಳಿಗೆ ರಸೀದಿಗಳನ್ನು M.T.C. ಫಾರಂ 5 A. (T. - & - A. 85) ರಲ್ಲಿ ಕೊಡಿಸಬೇಕು.

13

PROCEEDINGS OF THE MEETING OF THE CENTRAL ROAD TRAFFIC BOARD: EGMORE: M A D R A S HELD ON 10-1-53 (SATURDAY).

Item No.1.

Present: Sri P. C. Mathew, I.C.S., ... Chairman.
2. Sri T.D.Ramiah Pantulu,M.A.,B.L., ... Member.

R.No.6030/A1/52. Dated 10-1-1953.

Sub: APPEAL - Stage carriages - Route Hampankatta to Morgans Gate (via) Balmata Etc., - grant of permit to the United Trading Corporation and Workshops Ltd., by the Regional Transport Authority, South Kanara.

READ: 1. Petition dated 29-11-52 from Sri Alexander Misquith.
2. Petition dated 4-12-52 from the Ashok Industries Ltd.,
3. From the Regional Transport Officer, Mangalore No.9477-A/52, dated 9-12-52.

ORDER:

The Regional Transport Authority, South Kanara granted a stage carriage permit on a route in Mangalore Town Service (Hampankatta-Morgans Gate) to the respondent in preference to the two appellants.

2. The second appellant is a completely new entrant. The 1st appellant has one bus on the route, Mangalore to Condapur while the respondent has got another permit on another Town route which was granted to him on its surrender by the 1st appellant on the ground that it was unremunerative. The respondent has been rightly preferred to both the appellants since he is an existing operator and since he is already operating an another Town Route. Both appeals are accordingly dismissed.

3. xx xx xx xx.

DESPATCHED
16 JAN 1953

P. C. Mathew,
Chairman.

To

1. Sri Alexander Misquith,
C/o. Sri K.K.Menon, Advocate, 55, Gengu Reddi Road, Egmore, Madras.(Paras 1 and 2 only).
2. The Ashok Industries Ltd.,
C/o. K.S.Shetty, Advocate,
The National Insurnce Buildings, Esplanade,
Madras.(paras 1 and 2 only).
3. The United Trading Corporation and Workshops Ltd.,
C/o. Sri N.G.Krishna Iyengar,
95, T.P.Keil Street, Triplicane,
Madras. (paras 1 and 2 only).

Copy to the Regional Transport Officer, Mangalore.
(in full with records by Regd.post).

-/By order/-

SUPERINTENDENT.
15-1-53

SB.15-1:

BEFORE The CENTRAL ROAD TRAFFIC BOARD, M A D R A S.

Alexander Misquith, Proprietor, Messers Misquith Motor Service, Hampankatta, MANGALORE- 1. (South Kanara)	A p p e l l a n t.

V E R S U S

Messers The United Trading Corporation & Workshops Limited, MANGALORE. (South Kanara)	R e s p o n d e n t.

Appeal under Rule 147 of the Madras Motor Vehicles Rules against the proceedings under item No.I, dated 3-11-1952, of the Regional Transport Authority, South Kanara, in the matter of the grant of a pucca stage carriage permit for one bus on the Hampankatta to Morgan's Gate Route via Balmata and Kankanady.

Being highly aggrieved by the proceedings under item No.I, dated 3-11-1952, of the Regional Transport Authority, South Kanara, rejecting the appellant's application for the grant of a pucca stage carriage permit for one bus to ply on the Hampankatta to Morgan's Gate Route via Balmata and Kankanady, and granting the said stage carriage permit to the Respondent named above, the appellant begs to prefer this appeal on the following, among other, grounds:-

1. The Regional Transport Authority erred in rejecting the appellant's application for the stage carriage permit as,- even according to the reasoning adopted by the Regional Transport Authority in its proceedings under appeal,- the appellant was the best entitled of the 22 applicants for the grant of the said permit, as will be clear from the following submissions:-

(a) The Regional Transport Authority,- after properly rejecting the applications of 10 of the applicants,- namely, Nos.7,8,10,11,12,14,16,17,21 and 22,- on the ground that these applicants being"new-comers may not in these days of high costs and keen competition prove to be efficient operators to render good service to the public,if selected"; and the applications of 7 more,- namely, Nos.1,2,3,4,5,9 and 18,- on the ground that these applicants being "large fleet-owners should not be given monopoly in bus trade";- rightly

Misquith

decided that " as single bus operators have in the public interests to be made fleet-owners at the earliest opportunity to maintain bus service efficiently, the claims of the latter are considered in preference to these."

(b) The Regional Transport Authority, after rejecting the claims of the " single bus operators",-

No.13, M/s. West Coast Industrial and Commercial Syndicate Ltd., Udipi, and

No.19, M/s.S.C.S.Motor Service, Mangalore,-

in respect of the permit, the grant of which is in question in this appeal, on the ground that they " have a chance for other routes in today's meeting" (It may be noted that these operators were granted permits at the said meeting for the Mangalore to Bondel route and the Mangalore to Kaikamba route respectively); and the claims of the "single bus operator" No.20, Sri A.B.Nemath, on the ground that he " does not press his claim", should, in justice and equity, have granted the permit to the appellant, who was in fact the only remaining "single bus operator".

2. The Regional Transport Authority erred in granting the permit to the Respondent, who was applicant No.6 before the Regional Transport Authority; for, this grant of permit is based on the wrong assumption that the Respondent is a "single bus operator", as will be clear from the following submissions:-

(a) The Respondent, though granted a permit in August, 1962, for the Kadri Market to Urva Market route, has not yet obtained the said permit by producing the required bus before the authorities; nor has he started plying his bus on the route alloted to him in spite of the declaration of the Regional Transport Authority that "he has 2 vehicles also ready with him."

(b) Having regard to the fact that the Respondent has not yet started plying his bus on the route alloted to him so long ago as on 28-8-62, the Regional Transport Authority erred in invoking the argument that " in order that he (Respondent) may serve the public more efficiently

both in this route and in the unremunerative route he is selected." The argument that the present route is granted to the Respondent so that "he may serve the public more efficiently" rests on the false premise that the Respondent has been already plying a bus service efficiently.

(c) The Regional Transport Authority erred in classing the Respondent among "single bus operators" when, in fact, he has not yet obtained the permit for the route alloted to him on 28-8-52 by even producing the vehicle for being plied on the said route.

3. The Regional Transport Authority erred in rejecting the appellant's application for the permit in respect of the route under appeal; for, the grounds for this rejection are unsustainable as submitted below:-

(a) The only ground for rejecting the appellant's application has been set out as follows in the order under appeal:-

> "No.15 surrendered one of his unremunerative routes immediately on getting a remunerative route disregarding the difficulties caused to the public in so doing without adequate notice."

(b) Though it is true that the appellant did surrender the permit for the unremunerative Kadri Market to Urva Market route, the appellant nevertheless begs to submit that the insinuations that the unremunerative route was surrendered by the appellant immediately on getting a remunerative route, that this surrender was in disregard of the difficulties caused to the public, and that this surrender was without adequate notice, are thoroughly unjustified and unwarranted, as will be clear from the following submissions:-

(i) The Regional Transport Authority's order clearly concedes that the permit which the appellant surrendered was in fact for an unremunerative route.

(ii) The appellant, who started plying his bus MDX-1907 on 11-10-1951 on the unremunerative route

alloted to him, did maintain this service efficiently in spite of the heavy losses incurred by him day after day for over 2½ months up to 31-12-1951, when he was compelled to stop this service in the interests of self-preservation, after sustaining a loss of over Rs.4,500/- on this route during the period from 11-10-51 to 31-12-51.

(iii) The appellant had promptly intimated the stoppage of this service on the unremunerative route to the Regional Transport Officer on ~~2~~ 1-1-1952.

(iv) During the entire period of over 2½ months from 11-10-51 to 31-12-51, when the appellant regularly plied his bus MDA-1907 on this unremunerative route, the said bus could not pick up even half a dozen passengers on any single trip. In the face of this fact, there could be no more conclusive proof of the fact that this service on this unremunerative route was not really needed in public interests. The reasons for the lack of passengers on this route were that this service could not on its route touch Hampankatta, the centre of traffic in the town from which every other city and moffussil bus service starts, and that there were numerous other city bus services plying at all hours of the day throughout the route surrendered, except for the short distance of about 1½ furlongs from the Collector's Gate to the Bendoor junction.

(v) In spite of the heavy losses sustained by the appellant day after day on this admittedly unremunerative route, the appellant still made a determined last-ditch attempt to maintain this service by requesting the Regional Transport Authority to permit a deviation of the route, so that this bus could touch Hampankatta on its route. On the Regional Transport Authority rejecting this request, in deference to the emphatic protests from the other large fleet-owners, the appellant had no option but to stop his service on this route on 31-12-1951; and this the appellant did, promptly intimating the stoppage of this service to the Regional Transport Officer on 1-1-1952.

Accordingly

(vi) It was 25 days after the appellant intimated the stoppage of his service on the unremunerative Kadri Market to Urva Market route that the Regional Transport Authority, South Kanara, was pleased to grant the appellant a new permit for the Hampankatta to Kuloor route via Car Street.

(vii) The action of the Regional Transport Authority in granting this new permit for the Hampankatta to Kuloor route on 23-1-52,- though the Regional Transport Authority was fully cognisant of the fact that the appellant had stopped his service on the unremunerative Kadri Market to Urva Market route from 31-12-1951,- proves that the/Regional Transport Authority did not consider then either that the stoppage of the said service by the appellant adversely affected public interests, or that it could be made the basis for imputing inefficiency to the appellant, or that it warranted any action being taken against the appellant for the stoppage of the said service. Rather, it conclusively proves that the then Regional Transport Authority, which was fully conversant with local conditions and the extra-ordinarily difficult situation in which the appellant found himself, fully approved of the stoppage of the said service by the appellant, and therefore condoned it.

(viii) The truth of the above submission is further proved by the fact that the then Regional Transport Officer, to whom the appellant surrendered the permit for the unremunerative Kadri Market to Urva Market route with the appellant's covering letter dated 23-1-52, permitted the appellant on 19-2-52 to ply bus MDX-1907,- withdrawn by the appellant from the unremunerative route, the permit of which was duly surrendered,- on the Hampankatta to Kuloor route newly granted to the appellant. The proceedings of the then Regional Transport Officer containing these two orders,- R.No.5422/A2/1951 and Ref.C.No.5422/A2/51, dated 19-2-52,- are on one single sheet.

(ix) The above submissions conclusively prove that the/assumptions of the Regional Transport present

Authority that the appellant surrendered the permit for the unremunerative Kadri Market to Urva Market route "disregarding the difficulties caused to the public in so doing without adequate notice" are untenable and unwarranted; for, had there been any real justification for these assumptions, the then Regional Transport Officer and the then Regional Transport Authority would, and should, have promptly called for the appellant's explanation on these identical allegations.

(x) The subsequent action taken by the then Regional Transport Officer and the then Regional Transport Authority in again notifying the route surrendered by the appellant itself conclusively proves that this route was not really considered to have any special significance from the standpoint of public interests; for, the Regional Transport Officer, who notified the surrender by the appellant of the permit in respect of this unremunerative route in his proceedings R.No.5422/A2/1951, dated 19-2-52, called for fresh applications for this route in his notification M.C.No.1952-A/1951, dated 10-6-1952. This delay of nearly four months in notifying this route afresh proves clearly that the difficulties alleged to have been caused to the public by the appellant surrendering the permit (according to the Regional Transport Authority's present order) are imaginary rather than real.

(xi) The appellant begs to invite attention to the clinching fact that not one of the 21 other applicants for the route now under appeal raised the point of surrender of the permit for the unremunerative Kadri Market to Urva Market route by the appellant as a ground for disqualification against the appellant. The appellant submits with all respect that to his misfortune the Regional Transport Authority has been pleased to rely on this single point for basing its order rejecting the appellant's claims.

(xii) The above submissions make it clear that the only ground on which the appellant's claims have been rejected by the Regional Transport Authority is based on a misappreciation of facts, arising from the unwarranted

35

and uncharitable assumption that the surrender of a previous permit by the appellant was wilfully intended to inconvenience the public.

4. The Regional Transport Authority thus erred in preferring the Respondent's claims to the appellant's, having been misled to this conclusion by giving undue and exaggerated importance to the bona-fide surrender of a permit for an unremunerative route by the appellant, and reading into it a sinister meaning which the facts do not fairly warrant.

(a) Had the Regional Transport Authority only considered the facts fully and fairly, it would have sympathised with the appellant holding that,-in the desperate and helpless situation in which the appellant, an individual bus owner running but one other bus, found himself,- the appellant, unable to bear the daily mounting pile of losses, was compelled to take the only possible and inevitable step of saving himself from immediate financial ruin by stopping his service on the unremunerative Kadri Market to Urva Market route.

(b) The Regional Transport Authority's failure to properly appreciate the extremely trying circumstances under which the appellant was compelled to surrender the previous permit for an admittedly unremunerative route has resulted in great hardship to the appellant, and gravely prejudiced a fair, equitable and just consideration of the appellant's claims by the Regional Transport Authority.

5. The reasons given by the Regional Transport Authority for granting the Hampankatta to Morgan's Gate route to the Respondent are prima facie unsustainable:-

(a) These reasons have been set out as follows in the proceedings under appeal:-

"No.6 (Respondent) was first granted a permit in August 1952 for an unremunerative route surrendered by No.15 (appellant) for which he volunteered to

serve the public. He has workshop facilities and is himself dealing in motor spare parts. He has two vehicles also ready with him. In order that he may serve the public more efficiently both in this route and in the unremunerative route he is selected. Further a small sector of the unremunerative route to be run by him is served by the present route for which he is selected."

(b) The first point raised in favour of the Respondent is that " he volunteered to serve the public " by obtaining the permit for the unremunerative route surrendered by the appellant. In reply to this argument, the appellant begs to submit as follows:-

(1) The Respondent's volunteering to take up the unremunerative route surrendered by the appellant was apparently the result of collusion between the Respondent and Messers Shanker Vittal Motor Company Limited, which had successfully appealed to the Central Road Traffic Board, Madras, against the order dated 25-1-52 of the Regional Transport Authority, South Kanara, granting the appellant the permit for the Mampankatta to Kuloor route. The Writ Petition filed by the appellant in this matter,- in which Messers Shanker Vittal Motor Company Ltd. is the Respondent,- is still pending before the Honourable High Court of Judicature, Madras. M/s. Shanker Vittal Motor Company Ltd., the Respondent in this pending Writ Petition, is naturally interested in attempting to make it appear that the surrender of the permit for the unremunerative Kadri Market to Urva Market route by the appellant indicates his inefficiency as a bus operator. Such an argument could not be advanced if no one offered himself to take up this route. It was, therefore, in the interests of M/s.Shanker Vittal Motor Company Ltd. to find a person to take up the unremunerative route surrendered by the appellant. It will be seen from the proceedings of the Regional Transport Officer, Mangalore, in his Ref.C.No.1952/51-A, dated 17-7-52, that M/s.Shanker Vittal Motor Company Ltd., the Respondent and one Sri M.Sanjiva were the only 3 applicants for the unremune-

rative Kadri Market to Urva Market route surrendered by the appellant. The proceedings of the Regional Transport Authority, dated 28-8-52, show that when this route application came up for consideration at this meeting, Sri M.Sanjiva (apparently a person set up by M/s.Shanker Vittal Motor Company Ltd.) conveniently absented himself; and that of the remaining 2 applicants, including the Respondent,- both of whom appeared through a common advocate,- the Respondent was granted this route because Messers Shanker Vittal Motor Company Ltd. withdrew in the Respondent's favour. The Respondent Company and M/s.Shanker Vittal Motor Company Ltd. are closely allied concerns, with some common directors, having their office in the same building,- namely, in the Head Offic of M/s.Shanker Vittal Motor Company Ltd. at Attavar,Mangalore and the Managing Director of the Respondent Company is the uterine younger brother of the Managing Director of Messers Shanker Vittal Motor Company Limited.

(ii) Had the Respondent really, on his own accoun volunteered to take up this unremunerative route/ in public interests, and if, as a matter of fact, the public were put to real difficulties on account of the appellant's surrender of this route (as found by the Regional Transport Authority), there is no explanation why the Respondent, who " has 2 vehicles also ready with him," has not chosen so far to put one of these vehicles on this unremunerative route. The obvious inference, that fairly arises from the Respondent's failure to start plying his available bus on the unremunerative Kadri Market to Urva Market route, is that the Respondent merely intended to use his seeming anxiet to serve the public as a camouflage for/concealing ulterior motives, and incidentally as an argument in support of his subsequent applications for fresh permits; and, to the Respondent's extreme good fortune, this argument has found favour with the Regional Transport Authority.

(c) (iii) The argument that the present permit is granted to the Respondent so that " he may serve the public more efficiently", resting, as it does, on

the false premise that the Respondent has been already plying a bus service efficiently,-has been already shown to be untenable under para 2 (b) above.

(d) The only remaining argument, based on the Respondent having workshop facilities and his being a dealer in spare parts, is inconsequential, and cannot help the Respondent; for, in view of the fact that the Respondent has admittedly sufficient other business, there is no reason why the Respondent, quite a new entrant, should have been singled out for preference in the matter of the grant of the stage carriage permit in question. Incidentally it may be noted that the "workshop facilities" are apparently provided by the workshop of M/s.Shanker Vittal Motor Company Ltd. The grant of the permit to the Respondent has apparently afforded an opportunity to M/s. Shanker Vittal Motor Company Ltd.,- already a large fleet-owner,- to extend its operations under the name of an allied concern, and so strengthen its monopoly, in spite of the Regional Transport Authority's declaration in the order under appeal that " large fleet-owners should not be given monopoly in bus trade."

(e) The Respondent, not having started service as a bus operator, should, in fairness, have been regarded as a new entrant; and his application should have been rejected for the same reason on which the applications of Nos.7,8,10,11,12,14,16,17,21 and 22 have been rejected by the Regional Transport Authority.

6. The Regional Transport Authority erred in granting the permit under appeal to the Respondent overlooking the positive grounds for his disqualification,which were specifically taken to the notice of the Regional Transport Authority in the following passage of the appellant's representation dated 24-9-52:-

> "Their application for a bus permit was rejected by the R.T.A.,S.K., on 4-12-50 'as they are found to have sold their lorries with permits'. ~~Besides~~ Being new entrants, they are not eligible to preference."

7. The Regional Transport Authority erred in ignoring the following extraordinary facts affording just and adequate grounds for granting the route in question to the appellant in preference to other applicants:-

(a) That the appellant, who is running only one bus from Mangalore to/Coondapoor via Karkal and Someshwar, has been finding this service unremunerative; as this bus, which is permitted to do one round trip between Mangalore and Coondapoor only once in two days, is unable to return to the appellant's garage at Mangalore daily for cleaning and servicing; and hence the appellant is constrained to incur an additional expenditure of Rs.45/- per month at Coondapoor on account of the employment of an additional cleaner and the rent for a temporary shed for garaging his bus on alternate nights at Coondapoor.

(b) That the appellant is also hard hit by the competition he has to face on the single Mangalore to Coondapoor route, on which he plies but one bus, from the old well-established fleet-owners combined in "The Combined Booking Agency", who have lowered the passenger fare to Rs.2/8/- over the 90 miles between Mangalore and Coondapoor from the legitimate fare of Rs.3/4/6 which the appellant charges.

(c) That, on account of the cancellation of the permit granted to the appellant to run a stage carriage on the Hampankatta to Kuloor route, the appellant's bus MDX-1907,- on which the appellant has already invested Rs.16,000/-, is lying idle. The grant of the present route under appeal to the appellant will enable him to avail himself of this investment.

(d) That the appellant has all along maintained his bus service on the Mangalore to Coondapoor route efficiently, and to the entire satisfaction of the public and the authorities, in spite of all difficulties, hindrances and losses; and this record of the appellant's service entitles him to preferential treatment.

(e) That the appellant, having a bus ready for being put on the road immediately, is in a position to serve the public even more efficiently when made a fleet-owner.

8. The order of the Regional Transport Authority now under appeal is opposed to all considerations of justice and equity.

9. It is therefore prayed that, on a just and sympathetic consideration of the facts submitted above, the order of the Regional Transport Authority, South Kanara, dated 3-11-52, granting the permit for the Mangalore to Morgan's Gate route via Balmata and Kankanady to the respondent may be set aside, and that the said permit may be granted to the Appellant.

10. Challan No.234, dated 27-11-1952, of Mangalore Sub-Treasury for Rs.10/- (Rupees Ten only) towards payment of the necessary fee on this appeal, is enclosed.

Mangalore,
29th November, 1952.

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Appellant.

Enclosures:-

1. Extract from the Proceedings of the Regional Transport Authority meeting, South Kanara district, held on 3-11-1952 at 2.00 p.m. at the Collector's Office, Mangalore. Item No.I.
2. Challan No.234, dated 27-11-52, of Mangalore Sub-Treasury for Rs.10/-
3. Six spare copies of this appeal.

/TRUE COPY/

Illegible

Home (Tr.II) department.

C.No.31513/Tr.II/53. G.O.R.No. 648 dated 28.2.53.

M.Vs. - Stage Carriages - R.T.A., South Kanara - Route Hampankatta to Morgan's Gate via Balmatta and Kankanady - Permit refused by R.T.A. - Anpeal dismissed by C.R.T. Bd. - Revision petition to Govt. - Rejected.

Read: From Sri Alexander Misquith, revision petition d/14.2.53.

ORDER:

The R.T.A., South Kanara, granted a stage carriage permit on the route Hampankatta to Morgan's Gate via Balmatta and Kankanady in the Mangalore Town Service to the United Trading Corpn. & Workshops Ltd., Mangalore. The petr. and another appealed to the C.R.T. Bd. The Central Board, at its meeting held on 10.1.53, dismissed their appeals. It is against this order that the petr. has come up to the Govt. in revision.

2. Govt. have examined the case with reference to the order of the C.R.T. Bd. in R. No.60301/A1/52 d/10.1.53. The petr. has one bus on the route Mangalore to Coondapoor while the respt. has got another permit on another Town Service route which was granted to him on its surrender by the petitioner on the ground that it was unremunerative. The Central Road Traffic Board considered that the respondent had been rightly preferred to both the appellants before it since he was an existing operator and since he was already operating on another Town route. The contention that the respondent has not put a bus on the route first granted to him does not affect the grant in question. The fact that some of the directors of the United Trading Corpn. and Workshops Ltd. are also directors of M/S. Shankar Vittal Motor Co. Ltd. cannot operate as a bar against grant of permits to the respondent as they are two separately regd. companies. Further

48

the fact that the respondent was refused a permit on another route two years ago cannot affect the grant of permit in this case. Sale of lorries with permits cannot operate as a bar for getting stage carriage permits. The petr. has not raised any valid contentions against the grant of permit to the United Trading Corporation and Workshops Ltd, and the R.T.A. and the C.R.T. Bd. are agreed that the ~~United Trading Corporation~~ respondents have better claims than the petr. for the permit in question. The Governor of Madras therefore sees no reason to interfere.

para 7, 474

26.2.53 27-2-53

27-2-1953

Ord. (W.P.) Ord. (W.P.) 373 3790 4/3/53

To the Secy., C.R.T. Bd. (with copy of pp. 1-9 c.f.)
" the R.T.O., Mangalore (with copy of pp. 1-9 c.f.)
" Sri Alexander Misquith, Proprietor, Misquith Motor Service, Hampankatta, Mangalore (with pp.15-20 c.f. in orgl.)

by R.P.

C.No.3151/-Tr.II/53. Home (Tr.II) department.

M.Vs. - Stage carriages - R.T.A., South Kanara - Route Hampankatta to Morgan's Gate via Balmatta and Kankanady - Permit refused by R.T.A. - Appeal dismisse by C.R.T.Bd. - Revision petition to Govt.

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From Sri Alexander Misquith, revision petition, dated 14.2.53.

Abstract of the case.

District:	South Kanara
Route:	Hampankatta to Morgan's Gate via Balmatta and Kankanady.
Order of R.T.A.	Granted permit to the United Trading Corpn. & Workshops Ltd., Mangalore.
Order of C.R.T.Bd.	Dismissed appeal.
Petition before Govt..	From Sri A.Misquith to set aside the grant of permit to the United Trading Corpn. and award it to him.

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This is a case of revision petition against the appellate order of the C.R.T.Bd. at p.13 c.f. The appellate order of the C.R.T.Bd. was despatched on 16.1.53 and the revision petition has been received on 16.2.53. The petition ~~may be deemed to be~~ is in time. The prescribed fee of Rs.50/- has been paid. The facts of the case as gathered from the petition are as follows:-

2. The R.T.A., South Kanara granted a stage carriage permit on the route Hampankatta to Morgan's Gate via Balmatta and Kankanady in the Mangalore Town Service to the United Trading Corpn. & Workshops Ltd., Mangalore. The petr. and another appealed to the C.R.T.Bd. The Central Bd. at its meeting held on 10.1.53 dismissed their appeals. It is against this order that the petr. has come up to the Govt. in revision.

3. (1) The petr. contends that the respondent started service as a bus operator on 1.1.53, having been granted the first permit by the R.T.A. on 28.8.52, that he has

2/

put a bus on the route, that such being the case, the R.T.A. without waiting to watch his service, has granted him another permit at its meeting on 3.11.52 and that such a practice is a departure from the policy followed by the R.T.A. in such matters. para 3, p3 y

In its order on p.13 c.f., the C.R.T.Bd. has observed that the petr. has one bus on the route Mangalore to Coondapoor while the respondent has got another permit on another Town route which was granted to him on its surrender by the ~~first~~ petitioner on the ground that it was unremunerative and that the respondent has been rightly preferred to both the appellants before it since he is an existing operator and since he is already operating an another Town route. The contention that the respondent had not put a bus on the route first granted to him does not affect ~~to~~ the grant in question in view of the fact that operators are generally allowed four months' time for production of vehicle. para 2, p13 y

(2) The petr. also contends that the respondent company is closely ~~allied~~ allied with that of M/s.Shanker Vittal Motor Coy. Ltd. who are large fleet owners operating a ~~net~~ work of buses throughout the district and that the respondent company is thus only a creation of M/s.Shanker Vittal Motor Coy. who are attempting to extend their ~~operations~~ sphere of operation under the name of the respondent company with a view to by-pass the intention of the R.T.A. not to give monopoly to large fleet owners. paras 4-5, p3-5 y

It is seen from the copy of the list of share-holders submitted by the petr., that some of the directors in both these companies are the same but this cannot, it seems, be held against the respondent since it has been registered as a separate company. ~~and has not any affiliation or controlling interest in M/s.Shanker Vittal Motor Coy.~~ p15-21 y

(3) The petr. further contends that the R.T.A. had rejected a previous appln: of the respondent for stage carriage permit in December 1950 on the ground that they ~~have~~ had sold their lorries with permits. para 7, p7 y

This ~~xxxxxx~~ contention is not tenable as the rejection of the respondent's appln. in the matter of grant of permit on another route two years ago cannot have anything to do with the grant of the permit under revision. and Sale of lorries with permits cannot be a bar for getting stage carriage permits.

4. The petr. entered the field of passengers transport in 1951 and is operating one bus on the route Mangalore to Coondapoor which is not a Town Service. The respondent entered the field of passenger transport only in 1952 but he is having one permit ~~on~~ in the Town Service. Apparently the R.T.A. and the C.R.T.Bd. thought fit not to increase the number of town service operators and so granted the permit to the respondents. Further the petr. is stated to have surrendered the one route he had in the Town Service as being unremunerative though he claims that ~~it~~ this should not be held against him. Both the R.T.A. and the C.R.T.Bd. are satisfied that the respondents ~~has~~ have better claims than the petr. In the circumstances it is for orders whether the revision petition may be rejected summarily. May be circulated to M(P.H)

para 3, p3 g

cp. para 2, p13 g

para 6, pp5-7 g A

B 20.2.53

26/2/53

for the reasons given at 'A' above, the petition may be rejected summarily.

23.2.1953

(21st & 22nd - holidays)

J.S

I agree. The petitioner was not selected by the RTA or CRTB.

Petition Rejected
Decision of RTA & CRTB upheld for reasons given by them & with which I agree

K Krishnaswami
24/2/53

H Hanumanthaiya
23/2/53

U(D&L)

SECRETARY TO GOVERNMENT 25FEB1953 HOME DEPARTMENT

JOINT SECRETARY TO GO... 25FEB1953 DEPARTMENT

Draft order mkd.
B 26/2/53 H 27/2/53 M/27-2-1953

(Issued as Ho.R.No. 648, Home, D 28.2.53)

H-47-484